

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

HOLLY KIRWIN, a married woman;
GAIL ANDERSON, a single person; and
DAN O'ROURKE, in his capacity as
Chapter 7 Bankruptcy Trustee,

Plaintiffs,

v.

TEAMSTERS LOCAL UNION NO.
609; JUSTIC "BUCK" HOLLIDAY; and
VAL HOLSTROM,

Defendant.

NO: CV-10-365-RMP

ORDER GRANTING
DEFENDANTS' MOTION FOR
PARTIAL SUMMARY JUDGMENT

Before the Court is the Defendants' Motion for Partial Summary Judgment, ECF No. 26. Oral argument was had in this matter on October 14, 2011. The Court has reviewed the pleadings and the file in this case and is fully informed.

BACKGROUND

Defendant Teamsters Local Union No. 690 ("Local 690") is a local union affiliated with the International Brotherhood of Teamsters ("IBT"). ECF No. 59 at

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1 2. Local 690 is governed by an executive board consisting of a president, vice
2 president, secretary-treasurer, recording secretary, and three trustees. ECF No. 65
3 at 2.¹ Executive board elections are held every three years. ECF No. 65 at 2.
4 Defendant Justin “Buck” Holliday served as secretary-treasurer of Local 690 from
5 1995 until January 1, 2010. ECF Nos. 59 at 3, 65 at 3. Defendant Val Holstrom
6 served as executive board president from 1998 until 2009. ECF No. 65 at 3.

7 At the time relevant to the events of this case, Local 690 employed six
8 business agents and three administrative staff. ECF No. 65 at 3. The
9 administrative staff consists of an office manager, bookkeeper, and dispatcher /
10 “TITAN” operator. ECF No. 65 at 4. The administrative staff positions are
11 appointed by the Secretary-Treasurer. ECF No. 65 at 3.

12 Plaintiff Gail Anderson was hired by Local 690 in 1998. ECF No. 65 at 4.
13 Originally, Ms. Anderson was hired as a TITAN operator and receptionist. ECF
14 No. 46 at 8. TITAN is the IBT’s national information data base. ECF No. 46 at 9.
15 During her tenure at Local 690, Ms. Anderson also worked as a bookkeeper and
16 office manager. ECF No. 65 at 4. At the time of Ms. Anderson’s termination from

17 ¹Plaintiffs objected to the Court’s consideration of evidentiary materials filed
18 with the Defendants’ reply. ECF No. 68. At the October 14, 2011, hearing, the
19 Court overruled the objection and allowed Plaintiffs an opportunity to submit
20 additional documents opposing the summary judgment.

1 Local 690, Ms. Anderson was working as a TITAN operator and bookkeeper. ECF
2 No. 46 at 26. Plaintiff Holly Kirwin was hired by Local 690 in 2006 as a
3 Dispatcher / Secretary. ECF No. 46 at 34. Ms. Kirwin also had access to the
4 TITAN system. ECF No. 32 at 29.

5 The primary duties of the office staff were posting dues, communicating on
6 TITAN, answering phones, taking dues from members over the counter, serving as
7 support staff, filing, and dispatching. ECF No. 32 at 13, 59 at 4. When logged into
8 TITAN, Ms. Kirwin and Ms. Anderson had access to members' names, addresses,
9 phone numbers, social security numbers for those members who had supplied
10 them, and the names of the members' employers. ECF No. 32 at 9-10, 30. Ms.
11 Anderson and Ms. Kirwin had access to the office safe that housed the day's cash
12 and checks received, blank checks, deposit certificates, a petty cash drawer, and
13 the union seal. ECF No. 32 at 15, 46 at 42.

14 As bookkeeper, Ms. Anderson had access to receipts, credit card receipts,
15 and the union's bills. ECF No. 32 at 17. Ms. Anderson would open the mail
16 received by the union, including the secretary-treasurer's mail. ECF No. 46 at 14.
17 She would take the mail, open it, date stamp it, copy it, and put it in the appropriate
18 officer's box. ECF No. 46 at 14. Ms. Anderson also answered phones, did some
19 dispatching, worked on TITAN, took messages for business agents, and
20 occasionally prepared correspondence for the business agents. ECF No. 46 at 26-

1 27. Ms. Anderson considered the information on TITAN to be confidential. ECF
2 No. 32 at 22.

3 Ms. Kirwin's duties revolved primarily around answering phones, operating
4 the front desk, taking and inputting cash dues, mailing receipts, preparing bank
5 deposits, preparing materials for new hires, and preparing contract booklets for
6 members. ECF No. 46 at 34. Ms. Kirwin would take phone messages primarily
7 for Mr. Holstrom and Mr. Holliday. ECF No. 46 at 35. In taking dues, Ms. Kirwin
8 would handle cash and checks from members and provide a receipt. ECF No. 46 at
9 35-36. She was also type documents for business agents, including letters. ECF
10 No. 46 at 49.

11 In December 2009, Local 690 held an election for officers. ECF No. 65 at 6.
12 Mr. Holstrom ran to replace Mr. Holliday as Secretary-Treasurer. ECF Nos. 59 at
13 11, 65 at 6. Mr. Holliday declined to seek re-election and supported the "Tried and
14 True Performance Team," the slate on which Mr. Holstrom ran. ECF Nos. 59 at
15 11, 65 at 6.

16 Ms. Anderson ran for the position of Vice President on the "Members for
17 Members" slate. ECF Nos. 59 at 9, 65 at 6. That slate included Ms. Kirwin's
18 husband, who ran for a Trustee position, and Bob Holman, who ran for president.
19 ECF No. 59 at 9. Ms. Kirwin and Ms. Anderson supported the "Members for
20 Members" slate in opposition to Mr. Holstrom and the Tried and True slate.

1 When Mr. Holman announced that he would seek election on the Members
2 for Members slate, a meeting of the board was held without Mr. Holman. ECF No.
3 40 at 4-5. During that meeting, Mr. Holman's authorization to sign checks was
4 revoked. ECF No. 40 at 5. Mr. Holman complained of this conduct to the IBT and
5 the Joint Council of Teamsters No. 28. ECF No. 40 at 5. Mr. Holman's authority
6 was later reinstated. During the campaign for the 2009 board elections, Mr.
7 Holliday and Mr. Holstrom stated that employees opposing the Tried and True
8 slate would be terminated if the slate was elected. ECF No. 40 at 6.

9 The Members for Members slate was defeated, and the Tried and True slate
10 was elected. ECF No. 59 at 12. Shortly thereafter, Mr. Holliday terminated the
11 employment of Ms. Anderson and Ms. Kirwin. ECF No. 59 at 12. Mr. Holliday
12 sent letters to each explaining that his confidence in their ability to carry out the
13 policies implemented by the local office was shaken by their conduct in opposing
14 the Tried and True campaign.

15 **APPLICABLE LAW**

16 Summary judgment is appropriate "if the movant shows that there is no
17 genuine dispute as to any material fact and the movant is entitled to judgment as a
18 matter of law." Fed. R. Civ. P. 56(a). A key purpose of summary judgment "is to
19 isolate and dispose of factually unsupported claims" *Celotex Corp. v. Catrett*,
20 477 U.S. 317, 323-24 (1986). Summary judgment is "not a disfavored procedural

1 shortcut,” but is instead the “principal tool[] by which factually insufficient claims
2 or defenses [can] be isolated and prevented from going to trial with the attendant
3 unwarranted consumption of public and private resources.” *Celotex*, 477 U.S. at
4 327.

5 The moving party bears the initial burden of demonstrating the absence of a
6 genuine issue of material fact. *See Celotex*, 477 U.S. at 323. The moving party
7 must demonstrate to the Court that there is an absence of evidence to support the
8 non-moving party's case. *See Celotex Corp.*, 477 U.S. at 325. The burden then
9 shifts to the non-moving party to “set out ‘specific facts showing a genuine issue
10 for trial.’” *Celotex Corp.*, 477 U.S. at 324 (quoting Fed. R. Civ.P. 56(e)).

11 A genuine issue of material fact exists if sufficient evidence supports the
12 claimed factual dispute, requiring “a jury or judge to resolve the parties' differing
13 versions of the truth at trial.” *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors*
14 *Ass'n*, 809 F.2d 626, 630 (9th Cir.1987). At summary judgment, the court draws
15 all reasonable inferences in favor of the nonmoving party. *Dzung Chu v. Oracle*
16 *Corp. (In re Oracle Corp. Secs. Litig.)*, 627 F.3d 376, 387 (9th Cir. 2010) (citing
17 *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986)). The evidence
18 presented by both the moving and non-moving parties must be admissible. Fed. R.
19 Civ. P. 56(e). The court will not presume missing facts, and non-specific facts in
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1 affidavits are not sufficient to support or undermine a claim. *Lujan v. Nat'l*
2 *Wildlife Fed'n*, 497 U.S. 871, 888-89 (1990).

3 DISCUSSION

4 In their First Amended Complaint, the Plaintiffs alleged two violations of
5 Labor-Management Reporting and Disclosure Act (“LMRDA”) and wrongful
6 termination in violation of Washington State public policy. Since that time, the
7 Plaintiffs have filed a second and third amended complaint in which they added
8 claims for failure to pay overtime and breach of contract / promise of specific
9 treatment in specific situations. The instant motion addresses the Plaintiff’s
10 LMRDA and wrongful termination claims.

11 Plaintiffs’ Claims under the LMRDA

12 Section I of the LMRDA, 29 U.S.C. §§ 411-415, provides a “bill of rights”
13 for union members. Of note here are the following provisions of 29 U.S.C. §
14 411(a):

15 (1) Equal rights

16 Every member of a labor organization shall have equal rights and
17 privileges within such organization to nominate candidates, to vote in
18 elections or referendums of the labor organization, to attend
membership meetings, and to participate in the deliberations and
voting upon the business of such meetings, subject to reasonable rules
and regulations in such organization's constitution and bylaws.

19 29 U.S.C. § 411(a)(1).

20 (2) Freedom of speech and assembly

1 Every member of any labor organization shall have the right to meet
2 and assemble freely with other members; and to express any views,
3 arguments, or opinions; and to express at meetings of the labor
4 organization his views, upon candidates in an election of the labor
5 organization or upon any business properly before the meeting,
6 subject to the organization's established and reasonable rules
7 pertaining to the conduct of meetings: Provided, That nothing herein
8 shall be construed to impair the right of a labor organization to adopt
9 and enforce reasonable rules as to the responsibility of every member
10 toward the organization as an institution and to his refraining from
11 conduct that would interfere with its performance of its legal or
12 contractual obligations.

29 U.S.C § 411(a)(2).

(5) Safeguards against improper disciplinary action

No member of any labor organization may be fined, suspended,
expelled, or otherwise disciplined except for nonpayment of dues by
such organization or by any officer thereof unless such member has
been (A) served with written specific charges; (B) given a reasonable
time to prepare his defense; (C) afforded a full and fair hearing.

29 U.S.C. § 411(a)(5).

If any of these rights are violated, a person has a private right of action in the
United States district court. 29 U.S.C. § 412.

The Plaintiffs allege that the rights secured by § 411(a)(1)-(2) were violated
when Ms. Kirwin and Ms. Anderson were terminated for holding opinions and
making statements in opposition to the elected officials of Local 690. The
Plaintiffs also allege that the termination constituted “discipline” and violated
§411(a)(5).

1 In seeking summary judgment, the Defendants rely primarily on *Finnegan v.*
2 *Leu*, 456 U.S. 431 (1982). In *Finnegan*, the Supreme Court was faced with the
3 question of “whether the discharge of a union’s appointed business agents by the
4 union president, following his election over the candidate supported by the
5 business agents, violated the [LMRDA].” *Id.* at 432-33. The Supreme Court did
6 not decide whether a retaliatory discharge could ever give rise to a cause of action
7 under § 412, but the Court did decide that the LMRDA “does not restrict the
8 freedom of an elected union leader to choose a staff whose views are compatible
9 with his own.” *Id.* at 441. The Court noted that the purpose of the LMRDA “was
10 to ensure that unions would be democratically governed, and responsive to the will
11 of the union membership as expressed in open, periodic elections.” *Id.* (citing
12 *Wirtz v. Hotel Employees*, 391 U.S. 492, 497 (1968)). The Court concluded that
13 “the ability of an elected union president to select his own administrators is an
14 integral part of ensuring a union administration’s responsiveness to the mandate of
15 the union election.” *Id.* The Court left “open the question whether a different
16 result might obtain in a case involving nonpolicymaking and nonconfidential
17 employees.” *Id.* at 441 n.11. The Court recognized that this situation

18 [n]o doubt this poses a dilemma for some union employees; if they
19 refuse to campaign for the incumbent they risk his displeasure, and by
20 supporting him risk the displeasure of his successor. However, in
enacting Title I of the Act, Congress simply was not concerned with
perpetuating appointed union employees in office at the expense of an

1 elected president's freedom to choose his own staff. Rather, its
2 concerns were with promoting union democracy, and protecting the
rights of union members from arbitrary action by the union or its
officers.

3 *Id.* at 442.

4 It is plain from the record that the positions held by Ms. Anderson and Ms.
5 Kirwin were positions appointed by the Secretary-Treasurer and that the Secretary-
6 Treasurer was empowered to terminate them. It is also plain that Ms. Anderson
7 and Ms. Kirwin were terminated due to their conduct in opposing the slate
8 supported by the Secretary-Treasurer. Accordingly, the question for the Court is
9 whether Ms. Anderson and Ms. Kirwin are the type of employees who may be
10 terminated for opposing the slate supported by the Secretary-Treasurer.

11 Mr. Kirwin and Ms. Anderson assert that they are not the type of
12 confidential, policymaking employees discussed in *Finnegan* and that their
13 termination, unlike the business agents in *Finnegan*, is an actionable violation of
14 their LMDRA rights. The *Finnegan* Court did not explain what qualifies an
15 employee as confidential or policymaking. However, the Court did explain that its
16 concern was preserving the ability of an elected union official to effect the policy
17 goals for which he or she was elected by selecting a staff that he or she could trust.
18 Accordingly, when looking at whether information or authority available to a
19 union employee qualifies that employee as “confidential” or “policymaking,” the
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1 Court will focus on whether the employees are in a position to frustrate the policies
2 of the elected official.

3 Ms. Anderson opened and copied the mail that came into the union, kept the
4 union's books, took messages for the officers, and typed documents for the
5 officers. Ms. Kirwin similarly took messages for the elected officers, drafted
6 documents for those officers, and worked the front counter and phones for the
7 union. Along with a third member of the office staff, the Plaintiffs represented the
8 face of the union administration to its 3,000 enrolled members in the union's day-
9 to-day affairs. The Court concludes that, like the business agents in *Finnegan*, the
10 Plaintiffs have "significant responsibility for the day-to-day conduct of union
11 affairs." *Id.* at 441-42. Forcing an elected union official to retain appointed
12 support staff whom he does not trust would violate the official's ability to effect
13 the policy goals for which he or she was elected, which is the democratic purpose
14 for which the LMRDA was enacted.

15 Like in *Finnegan*, the election in this case proceeded in a democratic
16 fashion. Neither Ms. Anderson nor Ms. Kirwin was prevented from seeking office
17 or supporting the candidate of her choice. The record supports the conclusion that
18 the election was vigorously contested. There is no evidence in the record of voting
19 irregularities or other wide-spread disenfranchisement. Of the candidates and
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1 supporters on the losing slate, all but Ms. Kirwin and Ms. Anderson continue to be
2 members of Local 690. ECF No. 63 at 4.

3 The fact that Ms. Kirwin and Ms. Anderson are no longer members of Local
4 690 does not compel a different outcome in this case. Both plaintiffs' employment
5 was terminated on December 7, 2009. In her deposition testimony, Ms. Kirwin
6 admitted that she was a member until "either March or April of 2010." ECF No.
7 32 at 56. Ultimately, Ms. Kirwin was suspended from the union for nonpayment
8 of dues. ECF No. 32 at 54-56. Ms. Anderson admitted that her membership
9 persisted after her termination and ended when until she took an honorable
10 withdrawal from the union. ECF No. 32 at 50-51.

11 While continued membership in a union requires union employment, the
12 constitution of the IBT allows for six months in unemployment status before a
13 member is forced into honorable withdrawal status. ECF No. 63 at 10-11. Based
14 on this evidence, no reasonable jury could find that Ms. Kirwin and Ms.
15 Anderson's termination immediately disqualified them for union membership, as
16 Plaintiffs allege. There is no evidence in the record that Ms. Anderson or Ms.
17 Kirwin attempted to seek employment with any of the companies with which the
18 union had a collective bargaining agreement. Accordingly, the Court concludes
19 that Ms. Kirwin and Ms. Anderson's terminations did not directly lead to their
20 union membership being terminated.

1 The Plaintiffs' last argument under the LMRDA is that even if Ms. Kirwin
2 and Ms. Anderson were confidential or policy making employees, Ms. Kirwin and
3 Ms. Anderson may still bring a claim under the LMRDA because their
4 terminations were "part of a purposeful and deliberate attempt . . . to suppress
5 dissent within the union." *Sheet Metal Workers' Int'l Assoc. v. Lynn*, 488 U.S.
6 347, 355 n.7 (1989) (quoting *Finnegan*, 456 U.S. at 441).

7 In support of their argument, the Plaintiffs quote from the Fifth Circuit's
8 opinion in *Adams-Lundy v. Ass'n of Prof'l Flight Attendants*, 731 F.2d 1154, 1158
9 (5th Cir. 1984) for the proposition that:

10 Patronage, after all, is precisely a system of rewards and
11 punishments dependent on an individual's votes and views. Thus,
12 under ordinary circumstances, the shuffling of positions caused by
political in-fighting or factionalism within a union implicates no rights
safeguarded by the LMRDA.

13 Sometimes, however, one group or faction within a union may
14 become so entrenched and despotic that the democratic character of
the union is threatened. When this happens, and when the dominant
15 group strives to stifle dissent and efforts at reform within the union,
the rights of union members to belong to an open democratic labor
16 organization are infringed. As these are the core interests protected by
the LMRDA, the Act does provide a remedy in such a case, even if
17 the particular repressive action challenged is the removal from office
of a political opponent of the dominant clique-an action not ordinarily
comprehended by the terms of § 102.

18 The Sixth Circuit has noted that plaintiffs who attempt to prove a deliberate
19 suppression of political dissent "face an uphill battle." *Harvey v. Hollenback*, 113
20 F.3d 639, 644 (6th Cir. 1997). In *Harvey*, the court rejected the plaintiff's claim of
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1 purposeful suppression of dissent by noting that the plaintiff “remained free, as did
2 his supporters, to criticize openly the union’s leadership and policies without
3 retaliation” and that the plaintiff “was able to eventually mount a legitimate
4 campaign” for union political office “although his bid was ultimately
5 unsuccessful.” *Id.*

6 In their brief, the Plaintiffs identify thirteen facts that they claim support
7 their claim that Ms. Kirwin’s and Ms. Anderson’s terminations were part of a
8 deliberate attempt to suppress dissent. ECF No. 37 at 13-14. Taking these facts as
9 true, the Court concludes that the Plaintiffs have failed to establish that Mr.
10 Holstrom and Mr. Holliday represented a regime “so entrenched and despotic that
11 the democratic character of the union was threatened.” While the Defendants’
12 threats to fire employees who supported the Members for Members slate is
13 certainly troubling, the *Finnegan* court recognized that appointed employees who
14 oppose candidates risk termination should the opposed candidate win. 456 U.S. at
15 442. Additionally, where a union employs nine employees and has over 3,000
16 union members, the impact of threats to an appointed employee’s job security on
17 the democratic process is minimized, because even if all nine employees were
18 disenfranchised because of termination, the thousands of other union members
19 would still have a voice in union elections.

1 Additionally, while an officer's exclusion from a board meeting, and
2 subsequent stripping of his authority, in response to his declaring his candidacy on
3 an opposition ticket could in other circumstances support a finding of purposeful
4 political suppression, Mr. Holman's exclusion does not because he was reinstated
5 in eight days and was in no way hampered in his campaign for the office of
6 president. In short, like the plaintiff in *Harvey*, the Plaintiffs' assertion of political
7 suppression is belied by the fact that the record shows that they were able to
8 campaign and support a campaign in opposition to the Defendants. They have
9 failed to prevail in their uphill battle.²

11 ²The Court rejects the Plaintiffs' assertion that Mr. Holstrom's use of union
12 funds to "oppose the rank-and-file delegate slate in violation of the IBT
13 International Union Delegate and Officer Election Rules" is sufficient standing
14 alone to establish suppression of political dissent, ECF No. 37 at 14. The Plaintiffs
15 rely on *Brett v. Hotel, Motel, Rest., Constr. Camp Emps. & Bartender's Union*, 828
16 F.2d 1409 (9th Cir. 1987). However, *Brett* is easily distinguishable. Not only did
17 *Brett* present a plethora of preservation of error issues for the circuit that limited
18 the scope of its inquiry, but the plaintiff in *Brett* was removed from her office for
19 opposing the newly elected administration, and, when it was determined that she
20 would win re-election back to that office, the election was canceled and a new

1 Ultimately the Court concludes that this case falls squarely within the ambit
2 of *Finnegan*. Ms. Kirwin and Ms. Anderson were appointed employees of the
3 Secretary-Treasurer. They opposed the slate that had appointed them. After a full
4 and fair election, the slate they supported lost. As a result, their employment was
5 terminated. Under *Finnegan*, such a result does not violation the LMRDA.
6 Accordingly, Ms. Kirwin's and Ms. Anderson's claims under the LMRDA fail as a
7 matter of law.

8 **State law claims**

9 The Plaintiffs have alleged that they were terminated in violation of the
10 public policy of Washington State. Washington is an at-will employment state,
11 and, generally, an employee may be terminated for “no cause, good cause or even
12 cause morally wrong without fear of liability.”. *Ford v. Trendwest Resorts, Inc.*,
13 146 Wn.2d 146, 152 (2002) (quoting *Thompson v. St. Regis Paper Co.*, 102 Wn.2d
14 219, 226 (1984)). One of the recognized exceptions to this rule is a “narrow public
15 policy exception.” *Id.* (citing *Smith v. Bates Technical Coll.*, 139 Wn.2d 793
16 (2000)). “Under this exception, an employer does not have the right to discharge
17 an employee when the termination would frustrate a clear manifestation of public
18 policy.” *Id.* (citing *Smith*, 139 Wn.2d at 804-08).

19 officer appointed in her place. *Id.* at 1411-12, 1414, 1416. Nothing remotely
20 resembling those facts exists in this case.

1 The Plaintiffs assert that the clear public policy of the State of Washington is
2 identified by RCW 42.17A.495(2)³ which reads in pertinent part:

3 No employer or labor organization may discriminate against an officer
4 or employee in the terms or conditions of employment for (a) the
5 failure to contribute to, (b) the failure in any way to support or
oppose, or (c) in any way supporting or opposing a candidate, ballot
proposition, political party, or political committee.

6 The Defendants assert that the Plaintiffs' state-law claim is preempted by the
7 National Labor Relations Act ("NLRA"). Under the NLRA,

8 Employees shall have the right to self-organization, to form, join, or
9 assist labor organizations, to bargain collectively through
10 representatives of their own choosing, and to engage in other
concerted activities for the purpose of collective bargaining or other
mutual aid or protection

11 29 U.S.C. § 157. The NLRA restricts employers and labor organizations from
12 restraining or coercing employees from exercising the rights granted under § 157.

13 29 U.S.C. § 158(a)(1), (b)(1).

14 The Defendants contend that the state law claim provides a remedy for
15 conduct regulated by the NLRA and is thus preempted under the rule announced in
16 *San Diego Bldg. Trades Council, Millmen's Union, Local 2020 v. Garmon*, 359
17 U.S. 236 (1959). "[T]he *Garmon* rule prevents States not only from setting forth
18 standards of conduct inconsistent with the substantive requirements of the NLRA,

19 ³The Plaintiffs cited to RCW 42.17.680. That statute was recodified as
20 RCW 42.17A.495 effective January 1, 2012.

1 but also from providing their own regulatory or judicial remedies for conduct
2 prohibited or arguably prohibited by the Act.” *Wisconsin Dept. of Indus., Labor*
3 *and Human Relations v. Gould Inc.*, 475 U.S. 282, 276 (1986) (citing *Garmon*, 359
4 U.S. at 247).

5 The Plaintiffs assert that the protections here are not from the NLRA but are
6 instead from the LMRDA. The Plaintiffs further assert that, under the LMRDA,
7 state law causes of action are specifically not preempted. 29 U.S.C. § 413
8 (“Nothing contained in this subchapter shall limit the rights and remedies of any
9 member of a labor organization under any State or Federal law or before any court
10 or other tribunal, or under the constitution and bylaws of any labor organization.”).

11 However, while the LMRDA may not preempt state law, the LMRDA “was
12 intended to protect only rank-and-file union membership and not job security or
13 tenure of union employees.” *NLRB v. Carpenters Local Union No. 35*, 739 F.2d
14 479, 483 (9th Cir. 1984). In contrast, the NLRA “protections are intended to
15 protect the employee-employer relationship. *Id.*

16 The state law cause of action asserted by the Plaintiffs is a cause of action
17 for wrongful termination in violation of public policy. The statute cited by the
18 Plaintiffs in support of their claim that Ms. Kirwin’s and Ms. Anderson’s
19 terminations violated public policy speaks specifically about employment rights.
20 RCW 42.17A.495(2) (“No . . . labor organization may discriminate against an

1 officer or employee in the terms or conditions of *employment*.” (emphasis added)).
2 The Plaintiffs’ state law claim springs from their employment with the Union, not
3 their membership in the Union. As a claim springing from employment, the state
4 law claim is included within the protections of § 157, and the NLRA is applicable,
5 not the LMRDA,

6 In *Carpenters*, Klaus Martin and William Prescott were members of the
7 Carpenters Union Local 35 (“Union”). 739 F.2d at 480. They also were employed
8 by the Union and elected to positions within the Union. *Id.* Mr. Martin
9 challenged the board at regular member meetings on various issues related to the
10 Union’s financing. *Id.* at 480-81. Mr. Martin and Mr. Prescott also contacted the
11 Department of Labor to complain about the Union. *Id.* at 481. When it was time
12 for elections, Mr. Martin was defeated and lost his position while Mr. Prescott was
13 ruled ineligible based on past nonpayment of dues. *Id.* Mr. Martin and Mr.
14 Prescott again complained to the Department of Labor. *Id.* Eventually, Mr. Martin
15 and Mr. Prescott were fired from employment with the Union. *Id.* Mr. Martin and
16 Mr. Prescott brought suit alleging an unfair labor practice in violation of the
17 NLRA. *Id.* Mr. Martin and Mr. Prescott prevailed and the National Labor
18 Relations Board (“Board”) found that both Martin and Prescott had been
19 terminated because of their activities challenging the Union’s decisions. *Id.* at 482.

1 While Mr. Martin settled with the Union, Mr. Prescott's employment was
2 reinstated with back pay. *Id.* at 481.

3 On appeal to the Ninth Circuit, the Union argued that the activities engaged
4 in by Mr. Martin and Mr. Prescott were not protected under § 157 of the NLRA.
5 *Id.* at 482. However, the Ninth Circuit disagreed. The panel affirmed the Board's
6 decision that Mr. Martin and Mr. Prescott had "engaged in concerted activity for
7 the purpose of 'mutual aid or protection,'" because "they were attempting to
8 'protect the integrity of their collective bargaining representative.'" *Id.* at 482-83.
9 The Union argued that the rights asserted by Mr. Martin and Mr. Prescott were
10 rights under the LMRDA, and that the LMRDA did not protect the employment
11 relationship that the men had with the Union. *Id.* at 483. Focusing on the fact that
12 the LMRDA protected Mr. Martin's and Mr. Prescott's rights as members, and that
13 the NLRA protected their rights as employees, the panel stated, "[w]hile the
14 LMRDA may be the 'source for the protection of a union member's right to
15 participate fully and freely in the internal affairs of his own union,' the legality of
16 these discharges must be resolved within the framework of the [NLRA]." *Id.*
17 (quoting *Retail Clerks Union, Local 770*, 208 NLRB 356, 357 (1974)).

18 While it is not perfectly clear from the *Carpenters* opinion whether activity
19 engaged in for "mutual aid or protection" covers the whole of conduct protected
20 under the LMRDA, it is clear that, at a minimum, the adverse employment action

1 resulting from the campaign conduct described in this record is “arguably”
2 protected under the NLRA. *Gould*, 475 U.S. at 286. As that is all that is required
3 for state remedial schemes to be preempted, the Court concludes that the Plaintiffs’
4 state law claim for wrongful termination in violation of public policy is preempted
5 by the NLRA.⁴

6 Accordingly, **IT IS HEREBY ORDERED:**

7 1. The Defendants Motion for Partial Summary Judgment, **ECF No. 26**, is

8 **GRANTED.**

9 2. The Plaintiffs’ claims under the LMRDA and the Plaintiffs’ state law

10 wrongful termination claim are hereby **DISMISSED WITH**

11 **PREJUDICE.**

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18 ⁴Accordingly, this Court does not reach the Defendants’ other arguments
19 that public policy does not support the Plaintiffs’ state law cause of action or that
20 Ms. Kirwin is judicially estopped from asserting the state law claim.

ORDER GRANTING DEFENDANTS’ MOTION FOR PARTIAL SUMMARY
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1 3. All other claims remain pending.

2 **IT IS SO ORDERED.**

3 The District Court Executive is hereby directed to enter this Order and to
4 provide copies to counsel.

5 **DATED** this 21st day of February 2012.

6
7 *s/ Rosanna Malouf Peterson*
8 ROSANNA MALOUF PETERSON
9 Chief United States District Court Judge
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